



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,266	08/31/2000	Moshe Brill	00/20770	4051

7590 03/24/2004

G E Ehrlich (1995) LTD
c/o Anthony Castorina
Suite 207
2001 Jefferson Davis Highway
Arlington, VA 22202

EXAMINER

KARMIS, STEFANOS

ART UNIT	PAPER NUMBER
----------	--------------

3624

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/653,266

Applicant(s)

BRIL, MOSHE

Examiner

Stefano Karmis

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following application has been reviewed. Original claims 1-20 are pending. The rejections is as stated below:

Claim Objections

2. Claim 13 is objected to because of the following informalities: Specifically at the end of the claim there is a grammatical error in the phrase “offering said items at a the bid level...”

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1-3 and 7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by anticipated by Aggarwal et al. (hereinafter Aggarwal) U.S. Patent 6,151,589.

Regarding independent claim 1, Aggarwal discloses a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time (column 5, lines 1-13), setting a second threshold bid level at which to offer the item at a second time subsequent to said first time (column 6, lines 22-34), receiving one or more bids over a network (column 5, lines 14-24), upon receipt of a bid, calculating a bid time as a function of first threshold bid level, second threshold bid level, bid, first time and second time and accepting bids received in the order of said calculated bid time (column 6, lines 8-34).

Claim 2, the first threshold bid level is higher than said second threshold bid level and a first bid to be accepted from a plurality of bids to be received is a bid having an earliest calculated bid time (column 2, line 64 thru column 3, line 7).

Claim 3, the first threshold bid level is higher than said second threshold bid level and comprising the step of accepting any bid from a plurality of bids, which has an earliest calculated bid time in the past and then accepting received bids as a respective bid time is reached (column 2, line 64 thru column 3, line 7 and column 5, lines 34-46).

Claims 7 and 8, a final bid price is also a function of a total quantity of bids accepted and the step of defining a plurality of quantity price threshold levels, and using said levels to contribute to a determination of said final bid price (column 6, lines 21-61).

Art Unit: 3624

5. Claim 19 are rejected under 35 U.S.C. 102(e) as being anticipated by anticipated by Bigus et al. (hereinafter Bigus) U.S. Patent 6,401,080.

Regarding independent claim 19, Bigus discloses a tool comprising data storage for storing existing bids at price levels (column 10, lines 26-53) and further comprising a calculator means for calculating the probability of acceptance of a bid at a given price level based on existing bids and a predetermined algorithm (column 14, lines 37-67).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 4-6 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aggarwal et al. (hereinafter Aggarwal) U.S. Patent 6,151,589 in view of Godin et al. (hereinafter Godin) U.S. Patent 6,266,652.

Claims 4-6, Aggarwal teaches a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time (column 5, lines 1-13), setting a second threshold bid level at which to offer the item at a second time subsequent to said first time (column 6, lines 22-34). Aggarwal

fails to teach that the first and second calculated bid time or first and second bid levels are mappable linear functions of one another. Godin teaches a method of processing bids over a network in which first and second calculated bid time or first and second bid levels are mappable linear functions of one another (column 8, line 55 thru column 9, line 21). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal to incorporate the teachings of Godin and have the first and second time and bid levels be mappable linear functions because all the numbers involved are data points that can easily be placed into a spreadsheet to show auction trends and a desired price range during any point in time of the auction. There is sufficient motivation to combine the teachings of Aggarwal and Godin, both teach methods for method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time and a second threshold level to offer the item at a second time.

Claim 11, Aggarwal teaches a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time (column 5, lines 1-13), setting a second threshold bid level at which to offer the item at a second time subsequent to said first time (column 6, lines 22-34). Aggarwal fails to teach a plurality of quantity/price levels are set and for each level it is ascertained whether a total quantity ordered of all bids down to and including said price level equals the corresponding quantity level and if so a bid acceptance price is set at the lowest of price/quantity levels. Godin teaches a plurality of quantity/price levels are set and for each level it is ascertained whether a total quantity ordered of all bids down to and including said price

Art Unit: 3624

level equals the corresponding quantity level and if so a bid acceptance price is set at the lowest of price/quantity levels (column 8, line 55 thru column 9, line 21). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal to incorporate the teachings of Godin and have quantity/price levels are set and for each level it is ascertained whether a total quantity ordered of all bids down to and including said price level equals the corresponding quantity level and if so a bid acceptance price is set at the lowest of price/quantity levels because it provides a relationship between quantity and price in the auction. There is sufficient motivation to combine the teachings of Aggarwal and Godin, both teach methods for method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time and a second threshold level to offer the item at a second time.

Claims 10 and 12, Aggarwal teaches a user bidding on a product. Aggarwal fails to teach giving a personal discount dependent on a quantity of bid. Official Notice is taken that providing discounts based on the number of bids is old and well known in the financial arts. Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal to include for discounts based on quantity of bids because it provides an incentive to active participants in the auction process.

Regarding independent claim 13, Aggarwal teaches a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time (column 5, lines 1-13), setting a second threshold

Art Unit: 3624

bid level at which to offer the item at a second time subsequent to said first time (column 6, lines 22-34), receiving one or more bids over a network (column 5, lines 14-24), upon receipt of a bid, calculating a bid time as a function of first threshold bid level, second threshold bid level, bid, first time and second time and accepting bids received in the order of said calculated bid time (column 6, lines 8-34). Aggarwal fails to teach providing different quantities of the item to be auctioned and calculating the price based on the quantity for bid. Godin teaches a method of processing bids over a network in which upon receipt of a bid, calculating a cumulative quantity of times bid for and offering said items at a bid level corresponding to said cumulative quantity (column 8, lines 55-43). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal to incorporate the teachings of Godin and have calculating a cumulative quantity of times bid for and offering said items at a bid level corresponding to said cumulative quantity because it provides a relationship between quantity and price in the auction. There is sufficient motivation to combine the teachings of Aggarwal and Godin, both teach methods for method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time and a second threshold level to offer the item at a second time.

10. Claims 9 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aggarwal et al. (hereinafter Aggarwal) U.S. Patent 6,151,589 in view of Godin et al. (hereinafter Godin) U.S. Patent 6,266,652 in further view of Bigus et al. (hereinafter Bigus) U.S. Patent 6,401,080.

Claim 9 and 14, Aggarwal teaches a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time (column 5, lines 1-13), setting a second threshold bid level at which to offer the item at a second time subsequent to said first time (column 6, lines 22-34), receiving one or more bids over a network (column 5, lines 14-24). Aggarwal fails to teach of using data of existing bids to calculate a probability of acceptance of a new bid at a given price level. Bigus teaches a method of processing bids in which a buyer agent calculates an accepted probability value. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal in further view of Bigus and to allow for calculating the probability of a bid to be accepted because it provides desirable information to participants in the auction. There is sufficient motivation to combine the teachings of Aggarwal and Bigus because both teach a method for processing bids over a network.

Claim 15 and 17, Aggarwal teaches a tool comprising a data storage unit, said data storage unit operable to store data of existing bids and corresponding price levels. Aggarwal fails to teach of using data of existing bids to calculate a probability of acceptance of a new bid at a given price level. Bigus teaches a method of processing bids in which a buyer agent calculates

Art Unit: 3624

an accepted probability value (column 14, lines 37-67). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal in further view of Bigus and to allow for calculating the probability of a bid to be accepted because it provides desirable information to participants in the auction. There is sufficient motivation to combine the teachings of Aggarwal and Bigus because both teach a method for processing bids over a network.

Claims 16, 18 and 20, Aggarwal teaches a tool comprising a data storage unit, said data storage unit operable to store data of existing bids and corresponding price levels. Aggarwal fails to teach of using data of existing bids to calculate a bid level of 50% for acceptance. Bigus teaches a method of processing bids in which a buyer agent calculates an accepted probability value in any range from 0% to 100% (column 14, lines 37-67). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Aggarwal in further view of Bigus and to allow for calculating the probability of a bid to be accepted because it provides desirable information to participants in the auction. There is sufficient motivation to combine the teachings of Aggarwal and Bigus because both teach a method for processing bids over a network.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


- a) Pallakoff, US Patent 6,269,343 Jul. 31, 2001. On-line marketing system and method.
- b) Fisher et al., US Publication US 2003/0083981 May 1, 2003. Method and system for atomically adjusting a posted selling price.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
18 March 2004


STEFANO KARMI
SENIOR EXAMINER